

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NORMAN CHARLES PICKETT,

Plaintiff,

v.

JULEIGH PIERCE, *et al.*,

Defendants.

Case No. 2:24-cv-3182-JDP (P)

ORDER

Plaintiff, a state prisoner proceeding pro se, brings his first amended complaint against Juleigh Pierce, K. Montgomery, Johnson, and Woo—staff at the California Medical Facility—alleging varying constitutional violations. ECF No. 12. The allegations fail to state a claim. Plaintiff may, if he chooses, file a second amended complaint that addresses the deficiencies noted herein.

Screening and Pleading Requirements

A federal court must screen the complaint of any claimant seeking permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.*

1 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
 2 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
 3 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
 4 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
 5 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
 6 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
 7 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
 8 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that
 9 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
 10 n.2 (9th Cir. 2006) (en banc) (citations omitted).

11 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
 12 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it
 13 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
 14 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
 15 However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements
 16 of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
 17 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

18 Analysis

19 Plaintiff alleges that he was required to participate in a Cognitive Behavioral group. ECF
 20 No. 12 at 3. He alleges that during his participation in this group, Pierce was openly hostile
 21 toward him by not allowing him to introduce literature to the group and by failing to “be
 22 supportive during an argument” between himself and another group member. *Id.* He contends
 23 that Pierce had an “unconscious bias” toward him and her actions demonstrated “discrimination”
 24 that amounted to “spiteful conduct.” *Id.* He alleges that his liberty interests suffered due to
 25 Pierce’s actions because he was denied parole based on his failure to complete the Cognitive
 26 Behavioral program. *Id.*

27 Plaintiff next alleges that he was approached by Montgomery, Johnson, and Woo who
 28 threatened him with disciplinary action if he did not attend the Cognitive Behavioral program. *Id.*

1 at 4-6. He alleges that they approached him because he filed a grievance related to Pierce's
2 unconscious bias against him. *Id.* at 4. He alleges that the denial of his grievance against Pierce
3 amounted to a due process violation, *id.* at 8-11, and that defendants retaliated against him for
4 filing the grievance, *id.* at 4. He also generally alleges that he was denied equal protection under
5 a "class of one" theory because his grievances were improperly denied. *Id.* at 10-11.

6 Plaintiff's complaint fails to state a cognizable claim. First, plaintiff fails to bring a
7 cognizable due process challenge against the prison grievance procedure. Inmates do not have a
8 constitutional right to an effective grievance or appeal procedure. *Ramirez v. Galaza*, 334 F.3d
9 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Accordingly, an
10 inmate cannot make a colorable due process claim by generally alleging that the investigation into
11 their grievance was inadequate. *See Antonetti v. McDaniels*, No. 3:16-cv-00396-MMD-WGC,
12 2018 WL 11362954, at *7 (D. Nev. May 25, 2018) (finding plaintiff failed to state a cognizable
13 due process claim to the extent plaintiff's claim asserted the inmate grievance system was
14 inadequate); *see also Terrill v. Grannis*, No. 1:11-cv-00118-AWI-SKO, 2012 WL 5906648, at *8
15 (E.D. Cal. Nov. 26, 2012) (dismissing for failure to state a claim plaintiff's due process claims
16 based on dissatisfaction with the inmate grievance procedure). Plaintiff's complaints related to
17 the inmate grievance process and how his grievance was handled are insufficient to state a
18 colorable due process claim, *see Ramirez*, 334 F.3d at 860; *Mann*, 855 F.2d at 640; *Antonetti*, WL
19 11362954, at *7.

20 Additionally, to the extent plaintiff challenges the denial of his parole, such claim is
21 barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Challenges to the procedures used in the
22 denial of parole necessarily implicate the validity of the denial of parole. *Butterfield v. Bail*, 120
23 F.3d 1023, 1024 (9th Cir. 1997). As such, a plaintiff's challenge to an allegedly improper denial
24 of parole necessarily implicates the validity of plaintiff's continued confinement, and such
25 challenges cannot be brought "unless and until the conviction or sentence is reversed, expunged,
26 invalidated, or impugned by the grant of writ of habeas corpus." *Id.* at 1025 (citing *Heck*, 512
27 U.S. at 487). Plaintiff has not demonstrated that he has been granted a writ of habeas corpus
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1 invalidating or reversing the conviction that placed him in prison, and as a result any challenge to
2 his denial of parole is not cognizable in a § 1983 suit

3 To the extent that plaintiff's complaint can be read as bringing a First Amendment
4 retaliation claim, such claim also fails because plaintiff has not alleged that he suffered from an
5 adverse action or that his First Amendment rights were chilled. *See Rhodes v. Robinson*, 408
6 F.3d 559, 567-68 (9th Cir. 2005) (outlining the "basic elements" of a First Amendment retaliation
7 claim as "(1) [a]n assertion that a state actor took some adverse action against an inmate
8 (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's
9 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
10 correctional goal").

11 Finally, plaintiff fails to allege a cognizable equal protection claim. "To state a claim
12 under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth
13 Amendment a plaintiff must show that the defendants acted with an intent or purpose to
14 discriminate against the plaintiff based upon membership in a protected class." *Barren v.*
15 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiff has made no allegations
16 demonstrating that he belongs to a protected class. Plaintiff has also failed to make allegations
17 that would state a cognizable "class of one" claim, because he has failed to demonstrate how he
18 was treated differently from others who are similarly situated. *See Village of Willowbrook v.*
19 *Olech*, 528 U.S. 562, 564 (2000) (per curiam) (outlining the elements of a "class of one" claim as
20 a plaintiff being "intentionally treated differently from others similarly situated and that there is
21 no rational basis for the difference in treatment.").

22 Accordingly, plaintiff's first amended complaint is dismissed for failure to state a claim. I
23 will allow plaintiff another opportunity to amend his complaint before recommending that this
24 action be dismissed. If plaintiff decides to file an amended complaint, the amended complaint
25 will supersede the current one. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir.
26 2012) (en banc). This means that the amended complaint will need to be complete on its face
27 without reference to the prior pleading. *See E.D. Cal. Local Rule 220*. Once an amended
28 complaint is filed, the current one no longer serves any function. Therefore, in an amended

1 complaint, as in the original, plaintiff will need to assert each claim and allege each defendant's
2 involvement in sufficient detail. The amended complaint should be titled "Second Amended
3 Complaint" and refer to the appropriate case number. If plaintiff does not file an amended
4 complaint, I will recommend that this action be dismissed.

5 Accordingly, it is hereby ORDERED that:

6 1. Plaintiff's first amended complaint, ECF No. 12, is DISMISSED with leave to amend.

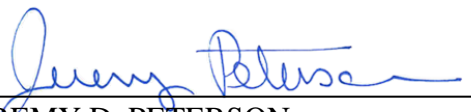
7 2. Within thirty days from service of this order, plaintiff shall file either (1) an amended
8 complaint or (2) notice of voluntary dismissal of this action without prejudice.

9 3. Failure to timely file either an amended complaint or notice of voluntary dismissal may
10 result in the imposition of sanctions, including a recommendation that this action be dismissed
11 with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

12 4. The Clerk of Court shall send plaintiff a complaint form with this order.

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14 IT IS SO ORDERED.

15 Dated: May 22, 2025

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17 JEREMY D. PETERSON
18 UNITED STATES MAGISTRATE JUDGE
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